

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ORDER

On May 10, 2013, Plaintiff Gregory Ackers, proceeding pro se, filed a complaint against Defendant South Carolina Electric and Gas Company, asserting that Defendant has polluted the Wateree River in South Carolina with toxic elements and metals in violation of the Clean Water Act, Safe Drinking Water Act, and the Resource Conservation and Recovery Act. Plaintiff asserts that he brings the action as a Relator under the False Claims Act. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling.

Defendant filed a motion to dismiss on August 19, 2013. Defendant asserts that Plaintiff, who is a resident of San Diego, California, lacks standing to bring the within action alleging harm in South Carolina. Defendant further contends that, to the extent Plaintiff brings a claim under the False Claims Act, he fails to state a claim upon which relief may be granted. Specifically, Defendant asserts that Plaintiff has failed to state with particularity any false representations or by whom they were made.

By order filed August 20, 2013, in accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the dismissal procedure and the possible consequences of failing

to respond adequately.¹ On October 21, 2013, Plaintiff filed a response in opposition to Defendant's motion, stating that standing is appropriate because he is a taxpayer and "outdoor recreationalist who drinks water[.]". Defendant filed a reply on October 29, 2013, reasserting its position that Plaintiff has failed to allege any fact from which the court may conclude that Plaintiff has been injured by any act or omission of Defendant.

On December 20, 2013, the Magistrate Judge issued a Report and Recommendation in which she determined that Plaintiff lacks standing to bring a justiciable case or controversy within the meaning of Article III of the United States Constitution. The Magistrate Judge noted that Plaintiff's generalized concerns about environmental contamination are insufficient to establish standing. She further determined that Plaintiff failed to state a claim under the False Claims Act. Accordingly, the Magistrate Judge recommended that the case be dismissed and any other pending motions be terminated. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310,

¹ The Roseboro order was again served on Plaintiff on September 24, 2013 after he informed the court of a change in address from San Diego to Santa Monica, California.

315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. Defendant's motion to dismiss is **granted**, without prejudice. All other pending motions are **denied as moot**.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

January 21, 2014

NOTICE OF RIGHT TO APPEAL

**Plaintiff is hereby notified of the right to appeal this order
pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**